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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,446	10/09/2003	Steven Michael Benedetti	0275M-000802	9794
27572	7590	04/28/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			SAETHER, FLEMMING	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/682,446

Applicant(s)

BENEDETTI ET AL.

Examiner

Flemming Saether

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 and 37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

KA

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 14-18, 20, 21, 23-25 and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Sato (US 4,524,494). In considering the embodiment of Figs. 16-18, Sato discloses fastener, formed of a unitary polymer, comprising a base (1) formed as a head with a concave umbrella shape, a center post, pillar or stalk (2), two resilient arcuate hinge sections (4), which form an inverted Y-shape with the post, each heaving two arcuate concave surfaces (one facing the base the other facing in the opposite direction) spaced from an end of the post and each of the hinges joining a wing (3) at an interior location to form a claw-hammer-shape or T-shape. Each wing having a first portion (at 3) sloped relative to the post extending towards and into the umbrella shape of the base and a second portion (at 17) extending in an opposite direction wherein the ends of the second portions form pincers in a beak configuration (at 18) collinear with a center axis of the post (see Fig. 16). The hinge segments include concentric surfaces in a circumferential direction.

In regards to claims 20, 21 and 23-25, the embodiment of figure 14 discloses the fastener each of the wings first part (3) and second part (8) in combination with its joined hinge is read to form a shape analogous to a claw-hammer. Each of the striking-

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face-analogous portions (3) being joined to the shaft by two bridges (15). The claw-analogous portion (8) resembles pincers (at 12).

In regards to claim 35, the fastener is disclosed used in combination with a hole in a automotive vehicle panel (column 3, lines 52-61) wherein the post is read as a pillar extending though the hole and bifurcated at the hinges to form the wings into first and second T-shaped deflectable members to be compressible against the hole in the panel and the method of inserting the fastener into the hole with a first force such that a second greater force is required for withdrawn and a third intermediate force necessary to begin deflection of the wings.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato as applied to claims 1 and 6 above, and further in view of Wittig (US 6,042,296). Sato does not disclose the wing first parts to be curved. Wittig discloses a fastener having wing first parts which are curved (see for example 680-684 a and b in Figs. 12 and 13) and intended for being received within a hole in a panel so as to bear against an edge of the hole. At the time the invention was made, it would have been obvious for on of ordinary skill in the art to provide the wing first parts in Sato with a

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curved shape as disclosed in Wittig to optimally engage the hole in the panel. The curved surface would provide optimal engagement by conforming to the shape of the hole. The specific dimension would be recognized depending upon the application of the fastener and the notice is taken in regards to the claimed material.

Claims 11-13 and 26-29, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato as applied above, and further in view of Giampavolo (US 6,604,265). Sato does not disclose bridges extending between the post and wing first part at a location between the distal end of said wing first part and near the distal end of said post. Giampavolo discloses a fastener wherein the "MALE" part of Fig. 3 disclose the fastener to include bridges (70) extending from a near distal end of a post (relative to wings) to a distal end of wings. At the time the invention was made, it would have been obvious for one of ordinary skill in the art to provide the fastener of Giampavolo with bridges as disclosed in Sato in order to control deflection of the wing. The bridges would prevent the wings from being overly deformed beyond their yield strength and making them inoperative as intended.

Claims 5, 22, 30, 31 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato or Sato as modified by Giampavolo as applied to claims 1-3, 20, 21, 26 and 29 above, and further in view of Skobel (US 4,534,090). Sato does not disclose the pincers or beak configuration to the fastener forming a tip area having a rounded or ball configuration received into a concave or socket configuration. Skobel

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discloses a fastener including a tip in pincer or beak configuration (at 62) comprising a rounded ball part (108) received in a concave socket shape (106). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to form the pincers of beak configuration part of Sato in a rounded ball - concave socket shape as disclosed in Skobel in order to better control the deflection of the second part of the wings of Sato. Indeed, the rounded ball - concave socket shape would better prevent unwanted relative movement between the second parts of the wings.

Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato in view of Skobel as applied to claim 31 above, and further in view of Giampavolo (US 6,604,265). Modified Sato does not disclose bridges extending between the post and wing first part at a location between the distal end of said wing first part and near the distal end of said post. Giampavolo discloses a fastener wherein the "MALE" part of Fig. 3 discloses the fastener to include bridges (70) extending from a near distal end of a post (relative to wings) to a distal end of wings. At the time the invention was made, it would have been obvious for one of ordinary skill in the art to provide the fastener of modified Sato with bridges as disclosed in Giampavolo in order to control deflection of the wing. The bridges would prevent the wings from being overly deformed beyond their yield strength and making them inoperative as intended.

In Response to Remarks

After consideration of applicant's remarks the rejections have been maintained largely in tact. However, it should be noted that the claim objection has been obviated by the amended.

Applicant argues claim 1 and presumably also claim 37 defines over the Sato, the '494 patent, by virtue of the claims requiring both arcuate surfaces being concave with respect to the head. In response the examiner disagrees because the '494 patent shown both arcuate concave surfaces and it is irrelevant as to what they may be relative to since "concave" is a stand alone term and does not require a reference. As a suggestion, the surfaces could be defined as curved with a radius in the direction of the head/base. However, applicant should be aware of the '494 patent's Fig. 19 which should similarly curved surfaces also Figs. 10 and 11.

Applicant next argues that claim 20 and 34 also defines over the '494 patent because the pieces 15, which examiner equates the two bridges, are in sliding contact with the shaft thus presumably would not be "joined". In response, the term "joining" as used in the claims is broad enough read on the sliding contact. In other words, "joining" does not preclude a sliding contact.

Applicant next argues claims 35 as amended. Applicants contends that the elements of the '494 patent equated to the pincers in the above rejection, would not

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collide since the '494 patent does not disclose sufficient deflection of the projection pieces. In response, the deflection for the pincers to close is, at best, claimed as in intended use of which prior art need only be capable of¹ and since the structure of the '494 patent is similar, in that the pincers are capable of colliding, with sufficient force the pincers would collide.

In regards to the rejections involving the '494 patent in view of Wittig, the '296 patent, applicant's arguments add nothing new content to rely on claims defining over '494 patent. Therefore, no further response is believed necessary.

In regards to the rejections involving the '494 patent in view of Giampavolo, the '265 patent, the applicant argues that there would be no motivation for the combination since the outcome of combination would not be desirable in the '494 patent. In response, after careful review of applicant's remarks, the examiner fails to understand how the inclusion of the bridges disclosed in the '265 patent would be undesirable in the '494 patent in view of applicant's remarks. Applicant indicates, to which the examiner agrees, that in the '265 patent the inclusion of the webs ("bridges" as claimed) would increase the force required to undo the buckle. However, the examiner fails to understand how the increased force to undo the buckle would equate to an increased force to insert the fastener. Undoing the buckle would similarly equate to undoing the

¹ See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

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fastener thus, contrary to applicant, it would be the force to undo or remove the fastener that would increase which has been assumed to be desirable.

In regards to the rejections involving the '494 patent, the '296 patent and, Skobel the '090 patent applicant's arguments again add nothing new content to rely previous arguments. Therefore, no further response is believed necessary.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

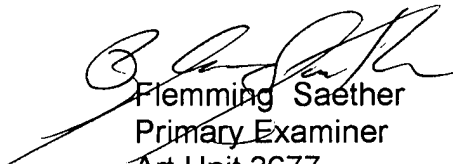
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 571-272-7071. The examiner can normally be reached on Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Flemming Saether
Primary Examiner
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